MONTANA LEGISLATIVE HISTORY

Chapter 532 1987

Bill H 362 S _____ Original bill & history X C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 31	✓ C	Hearing Date(s)	Mar 24	✓ C
	Feb 02	✓ C	No minutes were found for Mar 25		C
		C			C
		C			C
Date Out	Feb 02	✓ C		Mar 25	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 362

INTRODUCED BY SANDS

BY REQUEST OF THE TASK FORCE ON CORRECTIONS

IN THE HOUSE

January 19, 1983	Introduced and referred to Committee on Judiciary.
February 2, 1983	Committee recommend bill do pass. Report adopted.
February 3, 1983	Bill printed and placed on members' desks.
February 4, 1983	Second reading, do pass as amended.
February 5, 1983	Correctly engrossed.
February 7, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 8, 1983	Introduced and referred to Committee on Judiciary.
March 25, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1983	Second reading, concurred in.
March 28, 1983	Third reading, concurred in. Ayes, 40; Noes, 7.

IN THE HOUSE

March 28, 1983	Returned to House with amendments.

April 1, 1983	Second reading, amendments concurred in.
April 4, 1983	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

House BILL NO. 362

INTRODUCED BY Lanch

BY REQUEST OF THE TASK FORCE ON CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 46-18-222, MCA, TO PROVIDE THAT A VOLUNTARILY INDUCED INTOXICATED OR DRUGGED CONDITION MAY NOT BE CONSIDERED AN IMPAIRMENT TO A DEFENDANT'S MENTAL CAPACITY FOR THE PURPOSE OF PROVIDING AN EXCEPTION TO MANDATORY SENTENCES OR RESTRICTIONS ON DEFERRED IMPOSITION AND SUSPENDED EXECUTION OF SENTENCES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (3), (4), and (5) of 46-18-201, 46-18-221(3), and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution; however, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection;

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense."

-End-

should not be forced to sit through a program and then receive good time benefits.

REPRESENTATIVE BERGENE asked if there might be times that an inmates' judgement would be poor and that he would choose not to do something that would actually be beneficial to him. CHISHOLM replied the Department of Institutions has work training programs and work programs that they ask the inmates to participate in. Inmates can refuse to participate. The Department can enforce disciplinary measures.

REPRESENTATIVE DARKO indicated the statement in the bill that there is a diversified range of treatment in the education of inmates. She asked who makes the determination? She also stated that the women's prison does not have a diversified program. CHISHOLM replied the Department has a broad range of programs when all the institutions are taken as a whole. The women do not necessarily have every program because of the wide range of programs available at the men's prison. He was not sure of the sponsor's intent concerning this.

The hearing on the bill ended.

HOUSE BILL 362

REPRESENTATIVE SANDS, sponsor, stated this bill was requested by the Task Force on Corrections. The purpose of this bill is to amend the statute to provide that a person who was voluntarily intoxicated or drugged when he committed an offense may not claim an impairment to mental capacity for the purpose of obtaining a deferral of a mandatory sentence. People who are voluntarily intoxicated should not be excused from the actions they take when intoxicated.

A federal survey has indicated that 1/3 of all the inmates in prison committed their crime while intoxicated or drugged.

RITA CABRIN, Wolf Creek, was in favor of the bill. CABRIN stated last year her daughter was raped. The accused admitted his guilt but the judge gave him a deferred sentence. He was sent to an alcohol rehabilitation program. CABRIN felt any violent crime should carry a mandatory sentence. We all know what happens when we drink too much. That, however, should not excuse us from our actions. The average person does not have a chance for equal justice when he is a victim of a crime.

CHRIS PALMER, Wolf Creek, was also in favor of the bill. She stated the girl that was raped is a member of her family. Women who are raped and assaulted will not report the crime if they know nothing will be done. If rape cases are to be reported, the judges must stop this type of action. If a person is too

drunk to know what he is doing, he would probably be too drunk to do the crime in the first place.

JOHN MATSKO, Task Force on Corrections, was in favor of the bill. He felt the bill would fill a loophole. He has seen many cases where defendants have pleaded not guilty because their judgement was impaired. This is not a legitimate defense. This type of excuse could be stretched to the drunk driver who was too drunk to know he was in the car. A person who intentionally goes out and drinks should be responsible for his actions.

There were no further proponents.

LARRY ANDERSON spoke as an opponent of the bill. He stated he has spent some of his time helping those accused of crimes. He felt this bill is a modern prohibition statute. Prohibition did not work in the 1930's and it will not work today. He thought present law does what the criminal law is suppose to do. That is, it individualizes the offense and the offender and requires the offender to respond in an individual way to his conviction. The present legislation is an effort to do that. This bill seems to just punish the evil and not inquire into the person's state of mind. The bill is in conflict with Article 2, Section 8 of the Constitution.

KARLA GRAY, Montana Trial Lawyers Association, was against the bill. The Trial Lawyers are against mandatory sentencing, GRAY stated..

There were no further opponents.

REPRESENTATIVE SANDS stated in closing, the issue is not minimum mandatory sentencing but whether we should allow excuses for voluntary intoxication. Montanans do not want intoxicated people to go free.

REPRESENTATIVE SPAETH asked if the bill would take away some of the discretion of the judges. Yes.

REPRESENTATIVE DAILY asked if a judge gave a defendant a deferred sentence, would that defendant still serve time. It was replied that the person could be sentenced to up to 90 days of jail time as a condition of a deferred sentence.

REPRESENTATIVE BERGENE asked if there was such a thing as involuntary induced intoxication. REPRESENTATIVE SANDS replied yes, if someone slipped drugs into your drink that would be involuntary. The burden of proof would be on the prosecution as to whether the intoxication was voluntary or involuntary.

REPRESENTATIVE FARRIS asked if the Task Force had reached an opinion on whether alcoholism is a disease. REPRESENTATIVE SANDS, although not on the Task Force, personally thought it is a disease. REPRESENTATIVE FARRIS asked what about the alcoholic who is in remission. REPRESENTATIVE SANDS would presume that would be determined on a case-by-case matter.

REPRESENTATIVE ADDY felt that DUI crimes are usually voluntary intoxication. If someone crashes into another car while intoxicated, he should be punished and be held liable for punitive damages. ANDERSON replied the bill fails to take into consideration a situation in which people have their mental state disturbed because of their body chemistry due to the consequences of the alcohol. What do you do in the case of a young adult who has never had a drink, consumes alcohol and then suffers from a breakdown or seizure? Under this bill the courts would not look at him as an individual.

MATSKO stated the question of whether the Task Force felt alcoholism is a disease never came up. Some members did consider it a disease. That, however, does not give an alcoholic the right to do anything and be excused for it. MATSKO stated many of these people have gone into remission, for which he gave them credit. Those who have not, however, should not be absolved of the crime they committee while intoxicated.

REPRESENTATIVE FARRIS did not feel the bill addressed the problem. MATSKO replied the bill was designed to address the problem of using the defense of "I was too drunk to know what I was doing". The person who continues to break the law should be treated perhaps in the same way as a mentally incompetent person is treated. Perhaps he should be placed in a state hospital until he is able to cope and shows definite improvement. MATSKO stated up to 10% of the people in the United States are alcoholics. There is a difference between a person who is drunk and an alcoholic.

The hearing on the bill closed.

HOUSE BILL 398

REPRESENTATIVE JENSEN, sponsor, stated this bill is to clarify the test for responsibility for conduct engaged in while intoxicated or drugged. The sponsor gave the committee EXHIBIT G, the bill with his proposed amendments.

JOHN MAYNARD, Attorney General's Office, was in support of the bill as amended. The 1973 legislature enacted a new criminal code that states certain prescribed conduct is proscribed and made criminal by virtue of an act committed either purposely or knowingly. In 1979 the United State Supreme Court in Sandstrom

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 362 DATE 1/31/83

SPONSOR Rep. Sands

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Karla Gray		MTLA		X
Jack Sands		HD 68	✓	
L. A. Anderson				X
John G. Matsko		SELC / Corr. Task Force	✓	
Rita Cabrun	Wolf Creek		✓	
Chris Palmer	Wolf Creek		✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

that under normal circumstances. It was replied that the courts decide whether a person was voluntarily or involuntarily intoxicated. Voluntary intoxication is not a defense to criminal charges except a specific intent crime committed like conspriacy to commit murder. Involuntary intoxication can be a defense to just about any crime.

REPRESENTATIVE RAMIREZ asked if involuntary intoxication was treated differently than voluntary intoxication. Yes, because voluntary intoxication is the defense to a specific intent crime; involuntary intoxication is a defense that no crime was committed. The bill would eliminate the distiction between voluntary and involuntary intoxication. BRENDA DESMOND stated the statute as presently written states that under certain circumstances that is, involuntary intoxication, the person was not criminally responsible for the action, in other words there was no crime.

REPRESENTATIVE JENSEN noted the Attorney General's office worked out the language for the amendment. They consider it to be concise. The only proponent that supported the bill as originally drafted was JOHN MATSKO.

REPRESENTATIVE JENSEN withdrew his motions in order for the committee to research the bill further.

HOUSE BILL 362

The motion of DO PASS was made by REPRESENTATIVE IVERSON. REPRESENTATIVE ADDY seconded it.

REPRESENTATIVE RAMIREZ was opposed to the bill. He stated he introduced the first mandatory sentencing bill in the 1977 session. He felt there are still problems with that law. It is an injustice to young people who might get drunk and commit a crime for the first time.

REPRESENTATIVE SPAETH made a substitute motion of DO NOT PASS. REPRESENTATIVE SEIFERT seconded the motion.

REPRESENTATIVE JENSEN was opposed to the motion. Intoxication should not be an excuse for criminal behavior. The court needs direction.

REPRESENTATIVE SPAETH disagreed. A judge may take other factors into consideration. He would still have flexibility.

REPRESENTATIVE ADDY stated he was opposed to mandatory minimum sentencing but not as addressed by this bill.

A roll call vote was taken on the motion DO NOT PASS. Those voting yes were: D. BROWN, EUDAILY, KENNERLY, RAMIREZ, SCHYE, SEIFERT, SPAETH, and VELEBER. Those voting no were: ADDY, BERGENE, J. BROWN, CURTISS, DAILY, DARKO, HANNAH, IVERSON, JENSEN, and KEYSER. The motion failed 10 to 8. The vote was then reversed to a motion of DO PASS. The motion carried with a vote of 10 to 8. Those voting no above voted yes on this motion; those voting yes on the motion above voted no on this motion. House Bill 362 left the committee on a DO PASS motion.

HOUSE BILL 415

REPRESENTATIVE SEIFERT moved DO PASS, seconded by REPRESENTATIVE J. BROWN.

REPRESENTATIVE HANNAH asked if judges would go from district to district if the workload was too high. It was replied WALLACE CLARK is the only municipal judge in the state.

REPRESENTATIVE JENSEN stated that municipal courts are not set up in small rural areas. He felt that a judge should focus on being just a judge and not an attorney.

The motion of DO PASS carried with REPRESENTATIVE ADDY and JENSEN voting against the motion.

HOUSE BILL 417

REPRESENTATIVE J. BROWN moved DO PASS, seconded by REPRESENTATIVE EUDAILY.

REPRESENTATIVE CURTISS moved the committee change the mispelled words of "clonazepan" to "clonazepam" and "flurazepan" to "flurazepam". All were in favor of the motion.

REPRESENTATIVE J. BROWN moved DO PASS AS AMENDED, seconded by REPRESENTATIVE EUDAILY.

All were in favor of the motion. House Bill 417 left the committee on a DO PASS AS AMENDED recommendation.

OTHER MATTERS

BRENDA DESMOND presented the committee with EXHIBIT J, a proposed draft of a bill that would define the term "general election" for the purpose of submission to the people of laws or constitutional amendments by the legislature.

The draft was requested by the Committee Chairman because of uncertainty concerning the effect of 1979 changes in the election law on the law governing the submission of ballot issues by the

ROLL CALL VOTE ------ JUDICIARY COMMITTEE

	Date: 2/2 No: HB 362 Do Not Pass	Date: No:	Date: No:	Date: No:	Date No:	Date No:	Date: No:
BROWN, Dave	Yes						
ADDY, Kelly	No						
BERGENE, Toni	No						
BROWN, Jan	No						
CURTISS, Aubyn	No						
DAILY, Fritz	No						
DARKO, Paula	No						
EUDAILY, Ralph	Yes						
FARRIS, Carol	-						
HANNAH, Tom	No						
IVERSON, Dennis	No						
JENSEN, James	No						
KENNERLY, Roland	Yes						
KEYSER, Kerry	No						
RAMIREZ, Jack	Yes						
SCHYE, Ted	Yes						
SEIFERT, Carl	Yes						
SPAETH, Gary	Yes						
VELEBER, Dennis	Yes						

STANDING COMMITTEE REPORT

February 2, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 362

First reading copy (white color)

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 46-18-222, MCA, TO PROVIDE THAT A VOLUNTARILY INDUCED INTOXICATED OR DRUGGED CONDITION MAY NOT BE CONSIDERED AN IMPAIRMENT TO A DEFENDANT'S MENTAL CAPACITY FOR THE PURPOSE OF PROVIDING AN EXCEPTION TO MANDATORY SENTENCES OR RESTRICTIONS ON DEFERRED IMPOSITION AND SUSPENDED EXECUTION OF SENTENCES."

Respectfully report as follows: That HOUSE Bill No. 362

DO PASS

DAVE BROWN,
Chairman.

STATE PUB. CO.
Helena, Mont.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 1, 1983

The thirty-second meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on March 1, 1983 at 10:15 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present, except for Senator Halligan who was excused.

CONSIDERATION OF HOUSE BILL 355: Representative Sands advised that he was sponsoring this bill at the request of the Montana Supreme Court and the Montana Supreme Court Commission on the Rules of Evidence. The bill basically clarifies the laws relating to evidence. A major portion of HB355 is grammar and stylistic changes. Its second purpose is to make the statutes consistent with the new Montana Rules of Evidence adopted in 1977, eliminate those provisions which are duplicated and repeal those provisions which are unconstitutional. Finally, it eliminates those provisions which do not make sense.

PROPONENTS: J.C. Weingartner, representing the Executive Committee of the State Bar, advised that this bill had been the result of a study resolution requested by the previous legislature and he urged the Committee to give it favorable consideration.

Mike Abley, representing the Supreme Court, also testified in support of the bill.

There being no further proponents and no opponents, the hearing moved into executive action.

ACTION ON HOUSE BILL 355: Senator Mazurek moved SB355 BE CONCURRED IN. This motion passed unanimously.

CONSIDERATION OF HOUSE BILL 362: Representative Sands informed the Committee that he was introducing this bill at the request of the Task Force on Corrections. HB362 will make it clear that voluntary intoxication cannot be used as an excuse for the minimum sentencing provisions. Representative Sands emphasized that this bill is not designed to punish people that are intoxicated in such a manner that they do not know what they are doing as this type of person would not have the mental state necessary to form the criminal intent. He then advised that the House had added an amendment to the bill on the floor which provides that this law will only apply to the second offense. A proposed amendment was then distributed which would remove the exception for first offenses, as Representative Sands felt the current language creates an exception for the first offender (see Exhibit "A"). He also stated that there is plenty of flexibility available with the bill as it was originally introduced.

PROPONENTS: Rita Cabrin, a rancher north of Wolf Creek, testified in favor of the bill.

Chris Palmer of Wolf Creek, also testified in favor of the bill and supported the removal of the amendment added on the House floor.

OPPONENTS: Karla Gray, representing the Montana Trial Lawyers Association, testified in opposition as it is a matter of principle for the Trial Lawyers Association to oppose mandatory minimum sentence requirements.

There being no further proponents or opponents, the hearing was opened to questions from the Committee.

The Committee reviewed the sections which are referred to on page 1, lines 20 and 21. Chairman Turnage questioned if intoxication is a defense in a trial. Representative Sands advised that it can be used as a defense when the intoxicated condition destroys a person's ability to reason. The Committee then discussed the Cascade County case which instigated the drafting of this bill. Chairman Turnage also agreed that the House amendments do not make sense.

There being no further discussion, the hearing was closed.

CONSIDERATION OF HOUSE BILL 370: Representative Sands advised that he was sponsoring this bill at the request of the Task Force on Corrections as they felt there is a need for a statement on correctional policy. This policy would be beneficial when sentencing a defendant and also to county attorneys. HB370 outlines the policy. It establishes appropriate punishment, provides that those committing crimes should be held accountable for their actions and that criminal offenses should be prosecuted. It also lists four criteria to be followed when sentencing. Restitution to victims and repayment of counsel costs are also addressed in this bill. Treatment and educational programs for the rehabilitation of an offender will be made available under the provisions of HB370.

There being no proponents or opponents, the hearing was opened to questions from the Committee.

Senator Berg asked if there was a fiscal note available and felt there would be a large expense in providing treatment and educational programs to rehabilitate offenders. Representative Sands advised that educational opportunities are currently provided and did not see an additional fiscal impact. Senator Berg was still concerned that enacting of this policy would cause a significant cost increase and possible court cases could arise from the rehabilitation procedures.

The Committee also agreed that if this bill were passed there would be a need to coordinate the reference to restitution in House Bill 370 with Senate Bill 237.

There being no further discussion, the hearing was closed.

ACTION ON HOUSE BILL 362: Senator Berg felt that the bill recently passed by the Committee which requires a judge to state his reasons for sentencing could have an affect on HB362.

Senator Crippen moved to adopt the amendments proposed by Representative Sands. This motion carried unanimously.

The Committee then discussed the case which instigated this bill and minimum sentence provisions were reviewed in the MCA. Chairman Turnage did not like the idea of "tinkering" with judges' discretion.

Senator Berg moved HB362 BE NOT CONCURRED IN as he felt it was created because of one bad decision. This motion failed with Senators Hazelbaker, Galt, Mazurek, Crippen and Brown voting in opposition.

Senator Crippen then made a substitute motion to TABLE SB362. This motion carried unanimously.

ACTION ON HOUSE BILL 370: The Committee discussed the financial impact this bill could cause. The constitutionality of making treatment and educational programs aimed at permanent rehabilitation of the offender available was discussed.

Senator Shaw moved to TABLE HB370. This motion carried with Senator Crippen voting in opposition.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:05

Jean A. Turnage

JEAN A. TURNAGE
Chairman, Judiciary Committee

EXHIBIT "A"
March 1, 1983

[redacted] Amendments to HB 362

TITLE: Line 6.
Strike: "except when it is a"

Line 7.
Strike: "defendants first offense."

BILL: Page 2, line 4. following:
"however."
Strike rest of line 4,5,6,7,8.

Page 2, line 9.
Strike: "Condition. Then"

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 3-1-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)			✓
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

MARCH 25 19 83

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 362

Sands (Crippen)

Respectfully report as follows: That HOUSE Bill No. 362

Third reading bill (blue copy) be amended as follows:

1. Title, lines 6 and 7.
Strike: ",EXCEPT WHEN IT IS A DEFENDANT'S FIRST OFFENSE,"

2. Page 2, line 3.
Strike: ";"
Insert: "."

3. Page 2, lines 4 through 9.
Strike: "however" on line 4 through "THEN" on line 9
Insert: "However,"

And, as so amended,
BE CONCURRED IN

DXXPASSX

SENATOR JEAN A. TURNAGE Chairman.

STATE PUB. CO.
Helena, Mont.